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COUNTY OF LOS ANGELES - SHERIFF'S DEPARTMENT
INTERNAL AFFAIRS BUREAU INVESTIGATIVE REPORT

DATE OF INCIDENT May 3, 2001	**FILE NUMBER** IAB #2045094

SUBJECT(S)

[redacted]
Sergeant, #[redacted]
Crescenta Valley Station
Field Operations Region I

PATE, Jimmie
Deputy, [redacted]
Crescenta Valley Station
Field Operations Region I

COMPLAINANT(S)

1. William T. Sams, Chief
Field Operations Region I

CHARACTER OF CASE

Performance to Standards, 3-01/050.10
False Statements, 3-01/040.70

LOCATION

Saint Katherine Drive, La Canada, Calif.

REFERENCE Captain Ralph W. Martin, #[redacted]	**INVESTIGATOR** Scott Hill, Sergeant

SYNOPSIS

On May 3, 2001, while assigned as the Field Sergeant at Crescenta Valley Station, Subject Sergeant [redacted] summoned Subject Deputy Jimmie Pate to his location. Subject Pate was working a patrol unit. Subject [redacted] relayed information to Subject Pate regarding two persons Subject [redacted] was detaining. Subject [redacted] requested that Subject Pate omit Subject [redacted] participation in the incident so that Subject [redacted] could avoid being subpoenaed to court. Subject Pate completed a Statement of Facts report per Subject [redacted] instructions. Before Subject Pate was to testify in court he (Pate) confessed the omission to the handling Deputy District Attorney.

SUBMITTED BY Dennis H. Burns, Captain Internal Affairs Bureau	**REFERRED FOR RECOMMENDATION TO** Field Operations Region I

STATUS OF SUBJECTS

Continuing on Duty



County of Los Angeles
Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



LEROY D. BACA, SHERIFF

August 30, 2002

Deputy Jimmie Pate, #[redacted]

Dear Deputy Pate:

You are hereby notified that it is the intention of the Sheriff's Department to suspend you without pay from your position of Deputy Sheriff, Item No. 2708A, with this Department for a period of ten (10) days.

An investigation under File Number IAB 2045094, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Section 3-01/050.10, Performance to Standards, on or about May 3, 2001, you completed an official Los Angeles County Sheriff's Department report that was written under File #401-00976-1264-189. You knowingly included in the report, facts that did not occur, i.e., that you observed passengers in a vehicle and asked them to exit the vehicle when, in fact, you did not. You further deleted/omitted from the report, facts that did occur, i.e., your supervisor's (Sergeant [redacted] participation in the incident that spawned the report.

2. That in violation of Manual of Policy and Procedures Section 3-01/100.35, False Information in Records, on or about May 3, 2001, you completed an official Los Angeles County Sheriff's Department report that was written under File #401-00976-1264-189. You knowingly included in the report, facts that did not occur, i.e., that you observed passengers in a vehicle and asked them to exit the vehicle when, in fact, you did not. You further deleted/omitted from the report, facts that did occur, i.e.,

your supervisor's (Sergeant [redacted] participation in the incident that spawned the report.

Prior to determining this disciplinary action, I have thoroughly reviewed the incident and your record with this Department.

You have the right to grieve this disciplinary action within ten (10) business days of receipt of this letter. Your grievance procedures may be found in your classification's negotiated Memorandum of Understanding.

Failure to respond to this Letter of Intent within ten (10) business days will be considered a waiver of your right to grieve and will result in the imposition of this discipline indicated herein.

You may receive a copy of the material on which the discipline is based by contacting Luci Guillen of the Internal Affairs Bureau at [redacted] and arranging an appointment during the ten (10) day period in which you may respond.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

Original Signed

Ralph W. Martin, Captain
Commander, Crescenta Valley Regional Station

RWM:DHB:lg

c: Advocacy Unit
Employee Relations Unit
William T. Sams, Chief, Field Operations Region I
Internal Affairs Bureau
Office of Independent Review (OIR)
(File # IAB 2045094)

LOS ANGELES COUNTY DISTRICT ATTORNEY **CHARGE EVALUATION WORKSHEET**	☐ Further investigation requested. ☐ Probation Violation in lieu of filed. ☒ Prosecution declined.	DA CASE NO. 21801840 POLICE CASE NO. (DR OR URN NO.) 401-00064-2003-322	Page 1 of 4 Date: August 28, 2001 DA OFFICE CODE J.S.I.D. 01-0657R

SUSPECT DATA

NO.	SUSPECT NAME	BKNG NO.	CHARGE	REASON
01	[redacted]	N.I.C.	PC182(a)(2)	B - Insufficient evidence
			PC118.1	B - Insufficient evidence
02	PATE, JIMMIE	N.I.C.	PC182(a)(2)	B - Insufficient evidence
			PC118.1	B - Insufficient evidence

DESCRIPTION
SEE ATTACHED.

STEVE COOLEY District Attorney	COMPLAINT DEPUTY (PRINT) THOMAS KRAG/ap	DEPUTY CODE 137193	COMPLAINT DEPUTY (SIGNATURE)	REVIEWING DEPUTY

In submitting this matter for consideration of a complaint, written reports of substantially all available evidence (except as to the oral information, if any, purporting to have been given by me and which is fully and correctly stated above) have been submitted to the above-named Deputy (copies of which are attached hereto) except the following:

The disposition of this matter will be final unless the commanding officer requests reconsideration of the case, stating his reasons on the back of this form.

MAILED 08/31/01

OFFICER - SGT. JAMES KAGY
LASD - I.C.I.B.

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INTRODUCTION

The Los Angeles County District Attorney's Justice System Integrity Division has completed its review of an allegation that Los Angeles County Sheriff's Sergeant [redacted] Serial No. [redacted] and Deputy Jimmie Pate, Serial No. [redacted] conspired to file a false police report and filed a false police report in violation of Penal Code §§ 182 and 118.1. This case, in the form of a 68-page report, was presented to this office August 8, 2001, by Sergeant James Kagy of the Sheriff's Internal Criminal Investigations Bureau. Following a thorough review of the materials submitted in this matter, this office declines to initiate criminal proceedings based upon insufficient evidence of criminal conduct

ANALYSIS

On May 3, 2001, at approximately 10:55 p.m., Sergeant [redacted] was patrolling along Saint Katherine Drive past an off-street location known by the sergeant to be a hang out where young people frequently smoke marijuana while enjoying a view of the city lights below. Sergeant [redacted] saw a car parked near this location in a zone that prohibited parking between 10:00 p.m. and 6:00 a.m. [redacted] waited by the car and soon watched as [redacted] and his [redacted] emerged from the vista location and walked toward [redacted] car. The couple had been smoking marijuana and taking in the view. Sergeant [redacted] contacted the pair and [redacted] identified the car as his own. He also told the sergeant that he had been smoking marijuana and that some marijuana was inside the car. Sergeant [redacted] then radioed Deputy Pate and ordered him to the location to investigate the situation. Deputy Pate arrived shortly thereafter and contacted Mr. [redacted] The deputy asked for permission to search the car and was given consent. Inside the car he located a small zip-lock baggie containing marijuana. Deputy Pate then issued a citation for the misdemeanor marijuana violation to [redacted] and released him.

Though there is some dispute as to the exact words used, Sergeant [redacted] then told Deputy Pate to write him out of the report. Sergeant [redacted] lived in Corona and let Deputy Pate know that he did not want to be inconvenienced by the possibility of having to testify in court in this matter. The deputy, who completed his patrol probationary period one year earlier, felt pressured by the sergeant's request and did, in fact, omit any reference to the sergeant in his report. The report's narrative, in its entirety, was written as follows:

> While I was driving west bound Saint Katherine Dr. in a marked patrol car, I saw a silver Toyota Supra license plate #[redacted] parked on the south side of the street facing east in a no parking zone between 10pm - 6am.
>
> I contacted the two occupants of the vehicle, the driver (later identified

> as [redacted] M/H, D.O.B. [redacted]) and the passenger [redacted] F/H, D.O.B. [redacted] to warn/cite regarding the parking violation. For my safety, I asked both occupants to exit the vehicle. I asked [redacted] if he had anything illegal in the vehicle, and he stated "No." I asked [redacted] if I could search his vehicle and he stated, "Go ahead." While searching the vehicle, I found a "zip-lock" baggie containing a green leafy substance resembling marijuana on the drivers side floorboard.

Penal Code § 118.1, proscribing the filing of a false police report, provides as follows:

> Every peace officer who files any report with the agency which employs him or her regarding the commission of any crime or any investigation of any crime, if he or she knowingly and intentionally makes any statement regarding any material matter in the report which the officer knows to be false, whether or not the statement is certified or otherwise expressly reported as true, is guilty of filing a false report punishable by imprisonment in the county jail for up to one year, or in the state prison for one, two, or three years. This section shall not apply to the contents of any statement which the peace officer attributes in the report to any other person.

Two issues are raised regarding a potential violation of P.C. § 118.1. The first issue is whether liability exists under this statute for Deputy Pate's failure to mention Sergeant [redacted] activities.

Based on the plain language of the statute, an affirmative material false statement is required. The officer must knowingly and intentionally *make* a statement regarding any material matter in the report which the officer knows to be false.[1] Although no California decision involving P.C. §118.1 directly addresses this issue, the cases that deal with perjury can be drawn on by analogy to provide instruction. It has been a long established rule that the failure to make a statement of fact cannot be the basis for a perjury conviction. *People v. French* (1933) 134 Cal.App. 694, 699. Nor can perjury be based on a literally true, but misleading or unresponsive, answer. *Bronston v. United States* (1973) 409 U.S. 352. Therefore, a prosecution for filing a false police report based on Pate's failure to mention Avila's activities would not be justified.

The second, and more important issue is whether Deputy Pate made a materially false statement in

[1] Simple logic dictates why the law only criminalizes affirmative false statements by police officers in their reports rather than to also include omissions. Officers frequently leave out material information - for many reasons - and criminal defense attorneys routinely demonstrate that point in skillful cross-examination. To make officers criminally liable for what they fail to include in their reports would lead to a wholly undesirable result.

his report. Based upon the facts as they are known, the only false statement included in the report is the sentence that reads: "For my safety, I asked both occupants to exit the vehicle." This is a false statement as neither individual was ever observed by Deputy Pate or Sergeant [redacted] to have been inside the car. Nor were they ever directed to exit the car. This fictional statement was included, according to Deputy Pate, to account for the initial contact with [redacted] and [redacted] and to leave Sergeant [redacted] out of the report.

CONCLUSION

Materiality is defined as follows: A false statement in a police report is material if it could probably have influenced other persons in deciding whether a crime had been committed or whether the initiation of a criminal prosecution was warranted. Whether it actually had that effect is irrelevant. (This is a modified version of the relevant portion of *CALJIC* 7.21.)

The false statement included in Deputy Pate's report does not meet the legal definition of materiality. The report, written for the purpose of documenting an arrest for simple possession of less than an ounce of marijuana, includes truthful statements that fully document and support the charge. Where [redacted] and [redacted] were when first contacted by Deputy Pate is not relevant for a determination of whether [redacted] was illegally in possession of marijuana based upon the facts that are presented. He had been lawfully contacted in connection with his illegally parked car and, as correctly documented, gave consent for Deputy Pate's search of the car.

A charge of conspiracy to file a false police report between Sergeant [redacted] and Deputy Pate is not supported by the facts. This charge requires proof of a specific intent to agree to commit the crime of filing a false police report followed by an overt act for the purpose of accomplishing this crime. *CALJIC* 6.10. Rather, what is demonstrated by the facts is a lazy sergeant's attempt to avoid his obligations as a member of a law enforcement agency and an unseasoned deputy's failure to stand up to the improper demands of his supervisor.

The conduct of both Sergeant [redacted] and Deputy Pate falls far short of what should be expected of sworn members of the Los Angeles County Sheriff's Department. Regrettable as that is, the conduct does not support the initiation of criminal charges. It is recommended that this matter be addressed administratively by the Sheriff's Department and a clear message sent that this conduct is not tolerable.

RECEIVED

SEP 0 6 2002

EMPLOYEE RELATIONS

SETTLEMENT AGREEMENT

This Agreement is entered into between the Los Angeles County Sheriff's Department, hereinafter referred to as "Department", and Deputy Jimmie Pate, Employee Number [redacted] hereinafter referred to as "Grievant."

The Department and Grievant are parties to this dispute and desire to settle all issues involved in the Letter of Intent dated August 30, 2002, (IAB #2045094) upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, the Department and Grievant for and in consideration of the mutual covenants contained herein, agree as follows:

1. Both parties agree that the ten (10) day suspension shall stand. The Letter of Imposition shall contain the same charges as the Letter of Intent.

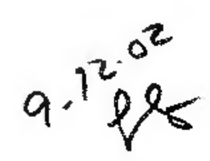
2. The Department will, upon execution of this Agreement, impose seven (7) days of the intended ten (10) day suspension. The remaining three (3) suspension days will be held in abeyance.

3. The Grievant understands that if he becomes the subject of a founded investigation involving similar violations of the Manual of Policy and Procedures, and that if the event resulting in the founded investigation occurred within the eighteen (18) month period of the date of execution of this Agreement, the three (3) days held in abeyance shall be imposed. In addition, the Grievant understands that he will be subjected to additional discipline for each and every founded violation of the Department's Manual of Policy and Procedures.

4. Both parties agree and understand that the Grievant's records will reflect that the ten (10) day suspension was imposed and may be used for the purposes of demonstrating "progressive discipline."

5. The Grievant agrees to waive any and all further administrative or judicial remedies with respect to the Letter of Imposition and the modified discipline, and also waives any administrative or judicial remedies with respect to any imposition pursuant to paragraph three (3), above.

6. The parties further agree that this Settlement shall not be considered, cited, or used in future disputes as establishing past precedent or past employment practice.



7. In consideration of the terms and conditions set forth herein, Grievant agrees to fully release, acquit and forever discharge the County, and all present and former officers, employees and agents of the County, and their heirs, successors, assigns and legal representatives from any and all liability whatsoever for any and all claims arising out of or connected with the employment relationship between the County and Grievant concerning the subject matter of the grievance referred to herein.

8. The Grievant further agrees to relinquish and expressly waives all rights conferred upon him by the provisions of California Civil Code Section 1542, which reads as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

9. The date of the last signature placed hereon shall hereinafter be known as the "date of execution" and the "effective date" of this Agreement.

10. The parties agree that the foregoing comprises the entire Agreement between the parties and that there have been no other promises made by any party. Any modification of this Agreement must be in writing.

I have read the foregoing Settlement Agreement and I accept and agree to the provisions contained therein and hereby execute it voluntarily and with full understanding of its consequences.

For the Sheriff's Department:

Date: 09/03/02

[signature]
Jimmie Pate, Deputy

Date: 9/4/02

[signature]
Ralph W. Martin, Captain



County of Los Angeles

Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



LEROY D. BACA, SHERIFF

September 17, 2002



Deputy Jimmie Pate, #[redacted]
[redacted]

Dear Deputy Pate:

On August 30, 2002, you were served with a Letter of Intention, indicating your right to respond to the Sheriff's Department's pending disciplinary action against you, as reported under File Number IAB 2045094. You were also advised of your right to review the material on which the discipline was based.

You did exercise your right to respond. After reviewing the response submitted to support your position, the Department executives have amended the recommended discipline.

You are hereby notified that you are suspended without pay from your position of Deputy Sheriff, Item No. 2708A, with this Department for a period of ten (10) days. However, pursuant to a settlement agreement between you and the Department, three (3) of the ten (10) days will be held in abeyance for a period of twelve (18) months ending on March 3, 2004. If you should become the Subject of a founded administrative investigation, with similar violations, and the event occurred within the prescribed time period, the three (3) days will be imposed. Additionally, you will be subjected to further discipline for each and every founded violation of the Department's Manual of Policy and Procedures. All Departmental records will reflect, nevertheless, that you received a ten (10) day suspension.

The effective dates for the remaining seven (7) day suspension are from September 21, 2002 through September 27, 2002.

An investigation under File Number IAB 2045094, conducted by Internal Affairs Bureau, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Section 3-01/050.10, Performance to Standards, on or about May 3, 2001, you completed an official Los Angeles County Sheriff's Department report

that was written under File #401-00976-1264-189. You knowingly included in the report, facts that did not occur, i.e., that you observed passengers in a vehicle and asked them to exit the vehicle when, in fact, you did not. You further deleted/omitted from the report, facts that did occur, i.e., your superviso r's (Sergeant [redacted] participation in the incident that spawned the report.

2. That in violation of Manual of Policy and Procedures Section 3-01/100.35, False Information in Records, on or about May 3, 2001, you completed an official Los Angeles County Sheriff's Department report that was written under File #401-00976-1264-189. You knowingly included in the report, facts that did not occur, i.e., that you observed passengers in a vehicle and asked them to exit the vehicle when, in fact, you did not. You further deleted/omitted from the report, facts that did occur, i.e., your supervisor's (Sergeant [redacted] participation in the incident that spawned the report.

Prior to imposing this disciplinary action, I have thoroughly reviewed the incident and your record with this Department.

You will hereby take notice that any future acts of misconduct may result in more severe disciplinary action.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

Original Signed

Ralph W. Martin, Captain
Commander, Crescenta Valley Regional Station

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures.

RWM:DHB:lg

c: Advocacy Unit
William T. Sams, Chief, Field Operations Region I
Internal Affairs Bureau
Personnel Administration
Office of Independent Review (OIR)
Crescenta Valley Regional Station/Unit Personnel File